

General Information Letter: The determination of whether or not a taxpayer has nexus depends on the specific facts and circumstances of each case, and is generally not an appropriate subject for letter rulings.

February 28, 2001

Dear:

This is in response to your letter dated January 18, 2001 in which you request a letter ruling. The following is in response to your questions with respect to Illinois income tax. Your questions with respect to sales and use tax have been referred to the Sales tax Division and will be addressed by a separate ruling. The nature of your letter and the information provided with respect to Illinois income tax require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding upon the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at www.revenue.state.il.us.

Your letter states as follows:

The Illinois Department of Revenue's opinion is requested in regard to the questions on pages 2 and 3 of this letter.

FACTS

Company A is a graphic design/advertising agency which has an office in Wisconsin. All of its employees are located in the office in Wisconsin. Its revenues come from designing, developing and producing various items such as brochures, inserts, folders, mail campaigns, magazine ads, newsletters, tradeshow booth graphics, catalogs and website designs. Company A does not own or lease any property in Illinois. It does not have any non-employee representatives or agents. The only activity of its employees in Illinois is meeting with customers about 45 days per year to discuss project objectives of the client, presenting ideas or concepts, how ads might be marketed, etc.

Proposals for jobs with Illinois customers are faxed to the Illinois customer for signature. If the customer agrees with the proposal, it is faxed by the Illinois customer to Company A's office in Wisconsin where it is received and approved.

Company A's transactions with Illinois clients may be structured in two different ways as described below:

Transaction 1

Customer enters into a contract with Company A to design, develop, and print a specified number of brochures, folders, newsletters or catalogs. Company A will develop various concepts or ideas for the customer and after the customer accepts a specific concept or idea, Company A will hire a separate entity, that is, a printer in Wisconsin, to print the brochures, catalogs, etc. That printer will ship the brochures, catalogs, etc. directly to the customer in Illinois or at other locations at the direction of the Illinois customer. The printer may or may not have sales tax nexus in Illinois. Company A's billing to the customer in Illinois is comprised of a

number of factors such as development or creative fees, media placement (e.g. placing an ad in a newspaper), printing charges, etc. The printer bills Company A for the printing, it does not bill Company A's customer.

Transaction 2

A customer enters into an agreement with Company A to develop ideas or concepts for a brochure, advertising campaign, catalog, etc. The concept or idea is transmitted to the customer in Illinois either electronically, by fax or by regular mail. After selecting one of the concepts or ideas, customer will then hire a third party printer to have the brochures or catalogs printed (rather than having Company A hire a printer). In such cases, the billing by Company A to the customer includes the charges for the development and design of those concepts or ideas. The printer directly bills the Illinois customer for the printing.

QUESTIONS

1. Based on the above facts, does Company A have nexus in Illinois for a) sales and use taxes, and b) corporate income taxes?

RULING

The determination of whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and information. However, we can provide general information regarding nexus with the State.

The Due Process and Commerce Clauses of the United States Constitution limit the power of states to tax foreign corporations. The Due Process Clause requires some minimum connection between a state and the person, property, or transaction it seeks to tax. (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904 (1992)). The Commerce Clause requires that the state's tax only be applied to an activity bearing a substantial nexus with the state. (Id.) A taxpayer's physical presence in a state satisfies these constitutional standards. Therefore, unless protected by Public Law 86-272, a state may subject to its income tax a taxpayer with a physical presence in the state.

In this case, it is likely that the activity of Company A's employees meeting with customers in Illinois about 45 days each year to discuss project objectives establishes Company A's physical presence within Illinois. (See IT-00-0048) Accordingly, Company A has nexus in Illinois for corporate income tax purposes.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding upon the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b).

If you have further questions concerning this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to the Illinois income tax laws, visit our website at

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www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)